IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14489 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KARSHANBHAI VALLABHBHAI PATEL L.HEIR OF DECD.VALLABHABHAI L.
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 14489 of 2004
MR VK JOSHI for Petitioner No. 1
MR NAGESH SOOD, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 29/01/2005

ORAL JUDGEMENT

#. In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the

legality and validity of the order passed by the Collector, Jamnagar dated 7.10.2004 in fixing the premium for the purpose of N.A. permission considering the market price of the land in question prevalent on the date of passing of the order.

#. Mr.V.K.Joshi, learned advocate appearing for the petitioner, has vehemently submitted that the impugned order passed by the Collector, Jamnagar dated 7.10.2004 in fixing the amount of premium for the purpose of granting N.A. permission considering the market price of the land in question at the time of passing of the order is not only arbitrary and illegal, but is also contrary to the direction issued by this Court by its order dated 30.8.2001, as, by judgment and order dated 30.8.2001, this Court has directed the Collector, Jamnagar to consider the market price which was prevalent in the year 1996 in respect of the land in question and to fix the market price of the land in question accordingly and to grant N.A. permission in favour of the petitioner.

#. Mr.Sood, learned AGP, has submitted that as such considering the Government Resolution dated 17.9.1984 and also the resolution dated 16.3.1982, the amount of premium is required to be fixed considering the market price prevalent at the time of passing of the order granting N.A. permission and accordingly, the order has been passed, and, therefore, requested to dismiss the present petition.

#. Heard the learned counsel for the parties.

#. It appears that earlier against the orders passed by the Collector, Jamnagar fixing the amount of premium dated 22.2.2000 and 28.3.2000, the petitioner had preferred Special Civil Application No.10070 of 2000 which came to be heard and disposed of by the learned Single Judge of this Court (Coram: H.K.Rathod,J) by judgment and order dated 30.8.2001 and this Court while quashing and setting aside the orders passed by the Collector, Jamnagar dated 22.2.2000 and 28.3.2000 directed the Collector, Jamnagar to reconsider the case of the petitioner for grant of N.A. permission on the basis of the Government Resolution dated 16.3.1982 and to consider the market price which was prevalent in the year 1996 in respect of the land in question and to fix the market price of the land in question accordingly on grant of N.A. permission in favour of the petitioner.

#. It is required to be noted that the order passed by this Court in the aforesaid petition has become final and

has not been challenged. In that view of the matter, it was not open for the Collector, Jamnagar to consider the market price prevailing at the time of passing of the order, i.e. prevailing as on 5.11.2001. Considering the directions issued by this Court, the Collector, Jamnagar was required to consider the market price which was prevailing in the year 1996 in respect of the land in question. Accordingly, the impugned order passed by the Collector, Jamnagar dated 7.10.2004 is required to be quashed and set aside and the Collector, Jamnagar is required to consider the market price which was prevalent in the year 1996 and to pass a fresh order.

#. For the reasons stated above, the impugned order dated 7.10.2004 passed by the Collector, Jamnagar is quashed and set aside and the matter is remanded to the Collector, Jamnagar for passing a fresh order with regard to grant of N.A.permission and fixing the amount of premium considering the market price which was prevalent in the year 1996 on its own merits and in accordance with law. Considering the facts and circumstances of the case, the Collector, Jamnagar is directed to pass appropriate orders as early as possible and preferably within a period of three months from the date of the receipt of the writ of this order after giving opportunity to the petitioner.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

(M.R.Shah,J)

(pathan)